

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Crl.MC.No. 3617 of 2003()

CC.650/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I,
PATHANAMTHITTA

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PETITIONER:

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1. THOMAS KOSHY, KOCHUVEETIL HOUSE,
NANNUVAKKAD MURI, PATHANAMTHITTA VILLAGE.
 2. K.J.GEORGE, KALLUMPURATHU VEEDU,
MANJANIKKARA MURI, OMALLUR VILLAGE,
PATHANAMTHITTA.
 3. K.V.SKARIA, KAIPPANPLAKKAL HOUSE,
MELUKARA MURI, KOZHENCHERRY VILLAGE,
PATHANAMTHITTA.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
 2. GEORGE N. EASSO, NADUVELIL HOUSE, KEESHUKARA
**IMPLEADED AS ADDL. R2 AS PER ORDER DATED 24-01-2007 IN
CRL.M.A. 271 OF 2007**

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V.RAMKUMAR, J.

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CRL.M.C. No. 3617 of 2003
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Dated, this the 29th day of June 2007

ORDER

Accused Nos. 2,5 and 6 in C.C. 650 of 2000 on the file of the J.F. C.M.-I, Pathanamthitta are the petitioners in this petition filed under Section 482 Cr.P.C. Petitioners seek to quash Annexure I police charge and Annexure II court charge and the consequential proceedings before the said Magistrate.

2. A private complaint was filed by respondents 2 and 3 herein before the J.F.C.M.-I, Pathanamthitta alleging offences punishable under Sections 465, 468 and 471 read with Sec. 34 I.P.C.

3. The gravamen of the complaint is as follows:

Complainants are the absolute owners in respect of room Nos. 523, 522 and 527 in Ward No. 8 of Kozhencherry Panchayath. These rooms were outstanding in the possession of A3 and A4 on lease and a printing press was being run in the rooms. While so, some time in the 2nd week of December 1997 the accused persons in prosecution of their common

intention to cause wrongful gain to them created false rent deeds purported by executed by the de facto complainants to make it appear that the rooms were taken on rent by accused Nos. 1 and 6 who had obtained possession of the printing press from accused Nos. 3 and 4 in a fraudulent manner with a view to cause wrongful loss to the complainants.

4. The private complaint was forwarded to the Aranmula police under Sec. 156 (3) Cr.P.C. It resulted in the registration of Crime No. 29 of 1998 by the Aranmula Police for the aforementioned offences. Annexure I is the final report filed by the police in which it is mentioned that the allegedly fabricated rent deeds could not be produced, as the same were not made available by accused Nos. 1 and 6, who were said to be in custody of the same.

5. Upon the learned Magistrate taking cognizance of the offences and issuing process, accused Nos. 2, 5 and 6 appeared before the Magistrate and pleaded for a discharge. The learned Magistrate was not inclined to uphold the plea but instead, framed Annexure-II charge for the aforementioned offences. Hence, this petition under Sec. 482 Cr.P.C. by accused Nos. 2, 5

and 6.

5. The learned counsel appearing for respondents 2 and 3 who are the complainants made the following submissions before me in support of Annexure – II charge:-

The accused had filed a Writ Petition before this Court for police protection on the allegation that accused Nos. 1,2,5, and 6 were tenants under the complainants in respect of the rooms in question. They had also produced photocopies of the rent deeds allegedly executed by the 3rd respondent herein. The complainants could have access only to the photocopy produced before this Court and it was basing on this photocopy that this private complaint was filed. When the accused are the persons who are in exclusive custody of the rent deeds in question, the complainants cannot be blamed for not producing the rent deeds. The complainants have already initiated proceedings before the civil court for ejection of accused Nos. 1,2,5 and 6. It was by resorting to forgery and fabrication that the aforesaid accused persons came into wrongful possession of the premises and the order passed by the learned Magistrate framing charge is absolutely legal.

6. I am afraid that I cannot agree with the above submissions. If accused Nos. 1,2,5 and 6 are total strangers who have absolutely no manner of right over the premises in question of which respondents 2 and 3 herein are the owners, their remedy essentially lies before the civil court. No doubt, if the aforementioned accused persons have produced the rent deeds before the civil court in justification of their possession of the premises, it will be well within the competence of the civil court, if moved, to initiate prosecution for forgery case, in case, a prima facie case in that behalf is made out. But even without the allegedly forged document before court, a criminal court cannot prosecute the accused for making forged documents or using the same as genuine. Without the allegedly forged document before the court it cannot be said that the document was dishonestly fabricated and signature was forged. Annexure II charge framed by the court overlooking these vital aspects, cannot, therefore, be supported.

7. There is yet another infirmity in Annexure – II court charge. Except faithfully copying down the police charge, the learned Magistrate has not applied his mind to the requirements

of framing a charge. A charge has to be framed strictly in accordance with Sections 211 to Sec. 214 Cr.P.C. and there should be independent count for each charge. Annexure II is just an apology for a charge and it does not satisfy the requirements mentioned in the Cr.P.C. For this reason also, the charge cannot be sustained.

7. The result of the forgoing discussion is that the cognizance taken and the charge framed by the learned Magistrate were illegal and are accordingly quashed.

8. It goes without saying that if any of the accused persons produce before the civil court a document under which he claims to be in possession and respondents 2 and 3 are able to convince the civil court that the said document is a forged document, it should be well within their rights to seek prosecution of the persons concerned for the appropriate offence which is made out.

This Crl.M.C. is thus allowed as above.

V. Ramkumar, Judge.

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V.RAMKUMAR, J.

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CRL.M.C. No. 3617 of 2003
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Dated, this the
29th day of June 2007

ORDER